

FILED

AUG 10 2010

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY Luh DEPUTY

MARVIS L. EVANS,

Petitioner,

vs.

GREG PROVINCE, Warden,

Respondent.

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No. CIV-10-489-W

ORDER

On July 15, 2010, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation in this matter and recommended that the Motion to Dismiss Petition for Failure to Exhaust Necessary State Court Remedies filed by respondent Greg Province, Warden, be denied and that this matter be stayed pending exhaustion of available state court remedies by petitioner Marvis L. Evans. The parties were advised of their right to object to the Report and Recommendation, but no objections have been filed within the allotted time.

Upon review of the record and because Evans has not advised the Court that he wants to omit from this Court's review the unexhausted claims in his Petition for a Writ of Habeas Corpus ("Petition"), the Court concurs with Magistrate Judge Purcell's suggested disposition of Province's request for dismissal and with Magistrate Judge Purcell's recommendation that the Court stay further consideration of Evans' Petition.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 13] filed on July 15, 2010;

(2) DENIES Province's Motion to Dismiss Petition for Failure to Exhaust Necessary

State Court Remedies [Doc. 9] filed on June 25, 2010;

(3) STAYS this matter pending exhaustion by Evans of his available state court remedies;

(4) DIRECTS Evans within thirty (30) days of his receipt of the decision by the Oklahoma Court of Criminal Appeals ("OCCA") in his pending post-conviction appeal, to file in this case a file-stamped copy of the OCCA's decision as well as an amended Petition for a Writ of Habeas Corpus asserting all of Evans' claims for relief;¹ and

(5) because Magistrate Judge Purcell has found that the Attorney General of the State of Oklahoma is not a proper respondent and should be dismissed from this action, see Doc. 5 at 2, ¶ 5, DIRECTS the Clerk of the Court to terminate the Attorney General of the State of Oklahoma as a respondent in this matter.

ENTERED this 10th day of August, 2010.


LEE R. WEST
UNITED STATES DISTRICT JUDGE

¹As indicated by Magistrate Judge Purcell, Province's response to Evans' amended Petition for a Writ of Habeas Corpus shall be filed within thirty (30) days of the filing of that document.